

MISSOURI COURT OF APPEALS EASTERN DISTRICT  
OPINION SUMMARY  
DIVISION FIVE

STATE OF MISSOURI,	)	No. ED102418
	)	
Plaintiff/Respondent,	)	Appeal from the Circuit Court of
	)	St. Louis County
vs.	)	
	)	
ANTHONY UMBERTINO,	)	Hon. Michael D. Burton
	)	
Defendant/Appellant.	)	FILED: April 5, 2016

Anthony Umbertino appeals the trial court's judgment after a jury convicted him of felony stealing. As city administrator for the City of Charlack, Umbertino collected \$20,000 in unreimbursed pay advances as well as vacation pay exceeding his accrued vacation time. At trial, the State presented evidence that Umbertino used the City's credit card for personal vacation expenses in support of a corruption charge that was later dismissed. In Umbertino's defense on the stealing charge, the trial court prohibited Umbertino's accounting expert from opining whether the pay advances were fraudulent or merely poor accounting. After trial, the court rejected Umbertino's proposed instruction on a claim-of-right defense that Umbertino believed he was entitled to the funds.

Umbertino asserts that the trial court abused its discretion by (1) refusing to instruct the jury on his claim-of-right defense, (2) admitting evidence that Umbertino used the City's credit card for personal expenses, and (3) precluding McGowan's testimony as to whether Umbertino committed fraud.

AFFIRMED

DIVISION FIVE HOLDS: (1) The trial court did not abuse its discretion in rejecting Umbertino's proposed jury instruction on a claim-of-right defense. Given the evidence that Umbertino took pay advances with the purported intention to repay them, he could not also claim that he had a right to keep them. (2) The trial court did not abuse its discretion by allowing evidence pertaining to Umbertino's use of the City's credit card. That evidence was relevant to the origin of the investigation, Umbertino's entitlement to vacation pay, and the charge of acceding to public corruption. The fact that the corruption count was subsequently dismissed does not render the evidence inadmissible retroactively. (3) The trial court did not abuse its discretion in prohibiting expert McGowan from opining whether Umbertino possessed the intent to permanently deprive the City of funds, as such a conclusion constituted an opinion on the defendant's guilt or innocence and thus usurped the decision-making function of the jury.

Opinion by: Lisa Van Amburg, Chief Judge  
Mary K. Hoff, J. and Roy L. Richter, J. concur.

Attorney for Appellant: Travis L. Noble, Jr.  
Attorney for Respondent: Daniel N. McPherson

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